

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS - ORDER NO. 2020-759

November 23, 2020

IN RE:	Application of Daufuskie Island Utility)	ORDER GRANTING
	Company, Inc. for Approval of an Increase)	MOTION TO COMPEL
	for Water and Sewer Rates, Terms and)	
	Conditions)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) pursuant to the Motion to Compel Production of Documents, Or, Alternatively, to Strike Testimony, (“the Motion”) filed by the Office of Regulatory Staff (“ORS”). The Commission heard oral arguments from the parties on the Motion on October 8, 2020. During the oral arguments, ORS was represented by Andrew M. Bateman, Esquire. Daufuskie Island Utility Company, Inc. (“DIUC”) was represented by Tom Gressette, Esquire, and Bloody Point Property Owner’s Association, Haig Point Club and Community Association, Inc., and Melrose Property Owner’s Association, Inc. (collectively referred to herein as the “POAs”) were represented by John J. Pringle, Jr., Esquire. A procedural history of the matter is useful in understanding the issues underlying the Motion.

On June 29, 2020, ORS served on DIUC its first and continuing request for production of documents for the second remand proceeding. DIUC submitted a response on July 10, 2020, in which it alleged that ORS’s request for production of documents was in direct contradiction of a ruling of the South Carolina Supreme Court. See DIUC Response to ORS Motion, Exhibit B.

According to DIUC, “the Request seeks to impose a higher level of scrutiny and an increased burden of production regarding the extensive documentation DIUC has already provided to ORS and to the Commission regarding DIUC’s Rate Case Expenses.” Subsequently, ORS filed a Motion for Clarification with the Commission seeking to determine whether the Commission sought to have ORS continue its investigatory review or cease to conduct any further review of DIUC and allow the Commission to rely upon the record as it stood at the time. See ORS Motion for Clarification, filed with the Commission on July 14, 2020. On July 22, 2020, in response to the ORS Motion for Clarification, the Commission issued Order No. 2020-496, in which it requested that ORS continue its investigatory review of DIUC’s rate case invoices.

On July 23, 2020, counsel for ORS contacted counsel for DIUC via e-mail and “once again [reiterated] the [previously sent request] that all documentation that demonstrates payment of these invoices be provided.” DIUC Response, p. 5. On July 24, 2020, ORS issued a second continuing request for production of documents for the second remand proceeding. DIUC submitted a response on August 7, 2020, in which it again declined to provide a reconciliation of specific Guastella Associates, LLC (“GA”) invoices that comprise the \$269,356 in rate case expenses, which the Company seeks recovery from ratepayers on remand. Response, Exhibit E. Accordingly, on August 17, 2020, ORS filed a Motion to Compel with this Commission in which ORS requested the Commission compel DIUC to provide, among other items, a reconciliation to identify the specific GA invoices that comprise the \$269,356. In its Motion and in order to comply with the Court’s Remand Opinion, which required ORS to conduct an objective and measurable analysis, ORS argued that it first required the ability to access and review the grouping of the individual GA invoices that comprise the requested \$269,356. See Oral Argument Tr. p. 18, ll. 9-19.

ORS argues that South Carolina Code Ann. §§ 58-4-55 and 58-5-230 plainly state that ORS has a statutory right and obligation to examine a utility's records. ORS Motion, p. 3; See S.C. Code Ann. §§ 58-4-55 and 58-5-230. Moreover, ORS states that South Carolina Code of Regulations §§ 103-517 and 103-719 declare that in addition to ORS having access to the utility's records, the utility must also be fully cooperative. ORS Motion, p. 3; S.C. Code Ann. Regs. §§ 103-517 and 103-719. Finally, ORS notes that, according to a previous filing made by Mr. John Guastella on behalf of Guastella Associates, if ORS requests company books, DIUC would provide them "to ORS either the same day or the next business day of its request." ORS Motion, p. 3; Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008. In that same filing, ORS states that Mr. Guastella also committed that "[i]n the event of any investigation by the PSC or ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, we will make a full set of requested records available at a location in South Carolina that is acceptable to ORS." ORS Motion, pp. 3-4; Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008.

In DIUC's Response to ORS's Motion ("DIUC Response"), DIUC asserted that it was not necessary to provide ORS with the specific invoices that comprise and support its request to recover \$269,356 from ratepayers and there was nothing more to compel from the Company. See DIUC Response, p. 6. At one point in its Response, DIUC states, "[t]he supposition that there has been some sort of incomplete response or that DIUC intentionally withheld information is totally ridiculous." DIUC Response, p. 8. However, at oral argument, counsel for DIUC conceded that DIUC could in fact provide the requested reconciliation to ORS, but did not want to because of possible strategic reasons. See Oral Argument Tr. p. 57, l. 15 through p. 61, l. 19. Instead, counsel for DIUC contended that, while the requested reconciliation could be provided, it should only be

provided to ORS after the Commission issues a final Order. See Oral Argument Tr. p. 50, ll. 9- 13; p. 70, l. 23 through p. 71, l. 24.

While DIUC has asserted there is nothing more for the Company to produce to ORS, based on the record and arguments presented by both parties at the recent hearing, the Commission has determined that DIUC can produce a reconciliation of individual GA invoices that it has previously refused to produce. Additionally, while counsel for DIUC suggested that it should be permitted to provide the ORS requested reconciliation after the Commission's final Order on the merits is issued, the provision of a reconciliation subsequent to the issuance of the final order would prohibit the Commission and ORS from complying with the statutory obligations to carry out their important responsibilities consistently, within an "objective and measurable framework." Oral Argument Tr. p. 81, ll. 20-24; See Daufuskie Island Util. Co., Inv. v. S.C. Office of Regulatory Staff, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019).

ORS argues that both Court Opinion No. 27905, and Utilities Services of South Carolina, Inc. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011) require that this Commission and ORS evaluate the evidence with an objective analysis based upon a measurable framework. In order to conduct the required analysis, ORS states that it must first be afforded the opportunity to review and analyze the specific GA invoices that comprise the amount of \$269,356 for which DIUC seeks recovery on remand and in this proceeding. We agree.

After a careful review and consideration of the positions and arguments presented to the Commission by both parties during oral argument, the Commission rules and finds that DIUC has additional relevant rate case information that must be produced, and that ORS's Motion is valid and well-founded under the law and consistent with the requirements mandated by the Supreme

Court. In addition, statutes, regulations, Commission Orders, and previous commitments from DIUC necessarily require a finding that ORS is entitled to access this specific Company information. The strategic concerns referenced by counsel for DIUC do not serve as sufficient legal justification to warrant the Commission to allow DIUC to withhold the requested Company data from ORS.

After the conclusion of Oral Argument and after discussion this Commission voted unanimously to grant ORS's Motion to Compel DIUC to provide the reconciliation of GA invoices that comprise the \$269,356 sought by DIUC on remand and in this proceeding, as well as other relevant documents that ORS requires to conduct and complete its required review. See Commission Order No. 2020-700. This Commission Order does not address, decide or bind the Commission as to how it might rule on the Company request for recovery of rate case expenses in this proceeding on remand or future proceedings. The Commission will not make any decision or ruling on recovery of rate case expenses, or any other recovery, until after ORS conducts its analysis and submits its conclusions and recommendations to the Commission and the Commission reviews any comments or objections submitted by the Company, and any information provided by the POAs. In addition, this Commission Order does not address, decide or bind the Commission as to how it might rule in any future company rate case filings as to the regulatory treatment of any remaining rate case invoices that are not subject to the Company request for recovery of \$269,356 on remand and in this proceeding. ORS had moved, in the alternative, that the testimony of Mr. Guastella be stricken as it relates to the \$269,356 in rate case expenses. Because of our decision herein, this portion of the Motion is held in abeyance.

ORDERING PROVISIONS

It is therefore ordered that within ten (10) days of DIUC's receipt of this Order:

1. DIUC must provide information to ORS including, but not limited to, a detailed reconciliation showing what invoices constitute the \$269,356 in contested GA invoices, including partial invoices¹ that comprise and support the Company request seeking recovery of \$269,356 from its customers on remand and in this proceeding; and

2. DIUC must provide any other appropriate related materials as may be requested by ORS including, but not limited to, complete responses to ORS for any requests for follow-up information that may serve to support the individual invoices for which DIUC seeks recovery in this contested proceeding.

a. DIUC must provide detailed descriptions of the invoices including, but not limited to, the business purpose of the work performed; the dates and hours of the work described; and the name of the employee that performed the work.

b. If an invoice includes travel expenses, DIUC must provide supporting documentation for travel expenses including, but not limited to, business purpose, name of employee, and receipts for all expenses.

The Motion to Compel is hereby granted. The Motion to Strike that portion of Mr. Guastella's testimony related to rate case expenses is held in abeyance.

¹ A partial invoice may contain descriptions and payment requests for other work provided by GA for the Company, and potentially claimable in this rate case, as well as work and payment requests that could be claimed as part of the ORS requested documentation of \$269,356 in rate case expenses in this rate case.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission
of South Carolina